

FILED

2009 DEC 22 PM 2:49

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY CMH DEPUTY

ORIGINAL

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6 Attorneys for Defendant
7 AMERICAN AIRLINES, INC.

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ROBERT S. MAWHINNEY,
12 INDIVIDUALLY AND AS A
13 REPRESENTATIVE OF OTHER
MEMBERS OF THE PUBLIC
SIMILARLY SITUATED,

14 Plaintiffs,

15 vs.

16 AMERICAN AIRLINES, INC. AND
17 DOES 1-10, INCLUSIVE,

18 Defendants.
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Cas. No. '09CV 2869

L RBB

[San Diego Sup. Court Case No. 37-
2009-00102754-CU-OE-CTL]

**DEFENDANT AMERICAN
AIRLINES, INC.'S NOTICE OF
REMOVAL PURSUANT TO 28
U.S.C. §§ 1332, 1441, 1446 1453**

[Class Action Fairness Act and
Diversity Jurisdiction]

Complaint Filed: November 24, 2009

CR

1 **TO THE UNITED STATES DISTRICT COURT FOR THE**
 2 **SOUTHERN DISTRICT OF CALIFORNIA, AND TO PLAINTIFF ROBERT**
 3 **S. MAWHINNEY AND HIS ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE THAT**, pursuant to 28 U.S.C. §§ 1332, 1441,
 5 1446, and 1453, Defendant American Airlines, Inc. ("American") hereby removes
 6 the above-entitled action from the Superior Court of the State of California in and
 7 for the County of San Diego to the United States District Court for the Southern
 8 District of California, and in furtherance of this removal aver:

9 1. On or about November 24, 2009, Plaintiff Robert S. Mahwinney
 10 ("Plaintiff") commenced this action by filing a Complaint in the Superior Court of
 11 the State of California in and for the County of San Diego, entitled *Robert S.*
 12 *Mawhinney, individually and on behalf of all others similarly situated v. American*
 13 *Airlines, Inc. and Does 1-10, inclusive*, Case No. 37-2009-00102754-CU-OE-CTL
 14 alleging the following cause of action: (1) Violation of the California Labor Code
 15 Private Attorneys General Act of 2004 (the "Complaint"). On or about December
 16 1, 2009, Plaintiff served American with the Complaint and other notices from the
 17 state court. A true and correct copy of the Complaint is attached as Exhibit A.

18 2. On December 21, 2009, American answered Plaintiff's Complaint. A
 19 true and correct copy of American's Answer is attached as Exhibit B.

20 3. This notice of removal is filed within thirty (30) days of service of the
 21 Complaint and is therefore timely under 28 U.S.C. § 1446(b).

22 4. **Class Action Fairness Act ("CAFA")**. As set forth below, this is a
 23 civil action of which the Court has original jurisdiction pursuant to 28 U.S.C. §
 24 1332(d) because this matter was brought as a class action as defined by CAFA,
 25 minimal diversity of citizenship exists between one or more members of the
 26 putative class and at least one of the Defendants, and the amount in controversy
 27 exceeds, in the aggregate, \$5,000,000 exclusive of interest and costs. Removal is
 28 therefore proper pursuant to 28 U.S.C. §§ 1446 and 1453.

1 5. This lawsuit is a civil action within the meaning of the Acts of
2 Congress relating to removal. *See* 28 U.S.C. § 1453.

3 6. This lawsuit was brought by a person on behalf of a defined class of
4 individuals. Specifically, Plaintiff alleges that he is an “aggrieved employee” and
5 brings this action under the Private Attorney General Act (“PAGA”) on a
6 “representative basis” on behalf of “Defendants’ other current and former
7 California employees” *See* Exhibit A, ¶ 1.

8 7. Accordingly, this matter is a purported class action pursuant to the
9 Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d)(1)(B), which
10 defines a “class action” as “any civil action filed under rule 23 of the Federal Rules
11 of Civil Procedure or similar State statute or rule of judicial procedure authorizing
12 an action to be brought by 1 or more representative persons as a class action.” *Id.*;
13 *Hansberry v. Lee*, 311 U.S. 32, 37 (1940) (“[c]lass action suits are representative
14 suits brought on behalf of groups of persons who are similarly situated but who
15 may or may not be parties to the suit.”).¹

16 8. **Diversity Jurisdiction.** In the alternative, if Plaintiff’s claim is not a
17 class action as defined by CAFA, this is a civil action of which the Court has
18 original jurisdiction pursuant to 28 U.S.C. § 1332 (diversity jurisdiction) and is one
19 which may also be removed by American pursuant to 28 U.S.C. § 1441. This is a
20 civil action where the amount sought by Plaintiff exceeds the sum or value of
21 \$75,000, exclusive of interest and costs, and is between citizens of different states.

22 9. **Citizenship.** Plaintiff is and was at all pertinent times a citizen of the
23 State of California. *See* Exhibit A, ¶ 2.

24 10. American, at all pertinent times, was and is a corporation established
25 under the laws of the State of Delaware, and maintains its principal place of

26
27 ¹ American disputes, and reserves the right to contest at the appropriate time,
28 Plaintiff’s allegations that this action can properly proceed as a representative or
class action.

1 business in the State of Texas. For purposes of diversity, a corporation is a citizen
2 of both the State in which it is incorporated (Delaware), and the State that
3 constitutes the corporation's "principal place of business" (Texas). *See* 28 U.S.C. §
4 1332(c)(1).

5 11. To determine whether a given State contains a substantial
6 predominance of corporate activity and therefore constitutes the principal place of
7 business, the following factors are considered: (1) location of employees; (2)
8 location of tangible property; (3) location of production activities; (4) relative
9 sources of income; and (5) where sales take place. *Tosco Corp. v. Cmtys. For A*
10 *Better Env't.*, 236 F.3d 495, 500 (9th Cir. 2001); *Indus. Tectonics, Inc. v. Aero*
11 *Alloy*, 912 F.2d 1090, 1094 (9th Cir. 1990).

12 a. American maintains hubs, which are major transfer points in the
13 Company's route system in the following cities: Dallas/Fort Worth, Texas;
14 Chicago, Illinois; Miami, Florida; and San Juan, Puerto Rico. American does not
15 have a hub anywhere in California.

16 b. American has, on average, 475 jet departures from its location in
17 Dallas/Fort Worth. The second busiest location for American is Chicago, Illinois
18 which has, on average, 274 jet departures. In contrast, American has only 223 jet
19 departures from *all* of its California locations *combined*.

20 c. American has six reservation centers throughout the United
21 States. The largest of these centers is located in Dallas/Fort Worth, Texas, with
22 approximately 2,000 employees. The next largest location is in Tucson, Arizona,
23 with approximately 900 employees. American has *no* reservation centers located in
24 California.

25 d. American employs approximately 19,762 employees in the
26 Dallas/Fort Worth metropolitan area in Texas. This number constitutes
27 approximately 20% of American's total employees, both domestic and
28 international. This is compared to only 7,970 employees in all of its locations in

1 California, comprising only 8% of its total workforce.

2 e. American's headquarters are located in Texas. American has a
3 training facility and a large maintenance facility in the Dallas/Fort Worth area.
4 American's facilities in the Dallas/Fort Worth areas include approximately 2.6
5 million square feet of office space, approximately 2.05 million square feet of
6 terminal space, roughly 400,000 square feet of cargo space, and about 1 million
7 square feet of other building space. The substantial predominance of American's
8 business takes place in Texas.

9 12. The citizenship of fictitiously named "Doe" defendants is to be
10 disregarded for the purposes of removal. 28 U.S.C. § 1441(a).

11 13. Therefore, based on the Complaint, at least one member of the
12 proposed class of plaintiffs (Mahwinney) is a citizen of a state different from a
13 defendant (American Airlines, Inc.).

14 14. Amount in Controversy. Removal is proper in a non-class lawsuit if,
15 from the allegations of the Complaint and the Notice of Removal, it is more likely
16 than not that the amount sought exceeds \$75,000. *Sanchez v. Monumental Life Ins.*
17 *Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996); *Lockett v. Delta Airlines, Inc.*, 171 F.3d
18 295, 298 (5th Cir. 1999).

19 15. Where, as here, a complaint does not allege a specific amount in
20 controversy, the removing defendant must show that it is more likely than not that
21 the amount in controversy exceeds the statutory minimum. *See Korn v. Polo Ralph*
22 *Lauren Corp.*, 536 F. Supp. 2d 1199, 1204 (E.D. Cal. 2008). This "burden is not
23 'daunting,'" and does *not* obligate the removing defendant to "research, state, and
24 prove the plaintiff's claims for damages." *Id.* at 1204-05.

25 16. In determining whether the jurisdictional minimum is met, the Court
26 considers all recoverable damages including statutory penalties and attorneys' fees.
27 *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 347-48 (1977);
28 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001); *Galt G/S v. JSS*

1 *Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).²

2 17. Plaintiff seeks a civil penalty in the amount of: (a) one hundred dollars
3 (\$100.00) for each of the first violation per employee, per pay period, and (b) two
4 hundred dollars (\$200.00) for each subsequent violation of each such provision, per
5 employee, per pay period under labor Code Section 2699(f). *See* Exhibit A, ¶¶ 1,
6 17-18. Plaintiff asserts there are over 2,000 employees for which he can recover
7 penalties. *Id.*, ¶ 11.

8 18. The statute of limitations for claims for penalties under Labor Code
9 Section 2699 is one year. *See* Cal. Code of Civ. Proc. § 340(a). American
10 employees are paid wages on a bi-weekly basis. Accordingly, one year of potential
11 liability for a Section 2699 claim by a current employee could be \$2,600 (*i.e.*, \$100
12 x 26 pay periods). Therefore, the total amount sought by Plaintiff for the Labor
13 Code Section 2699 claim could be \$5,200,000 (\$2,600 x 2,000 employees).

14 19. In addition, Plaintiff seeks an award of attorney's fees. *See* Exhibit A
15 ¶ 19, Prayer, at ¶ 2. Courts have held that an award of attorneys' fees, if such fees
16 are authorized, may be considered for purposes of calculating the amount in
17 controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir.
18 1998). PAGA provides that a prevailing employee is entitled to reasonable
19 attorneys' fees. Cal. Labor Code § 2699(g)(1). Thus, the amount sought to be
20 recovered by Plaintiff exceeds the \$75,000 amount in controversy requirement.

21 20. Additionally, pursuant to CAFA, the claims of the individual members
22 in a class action are aggregated to determine if the amount in controversy exceeds
23 the sum or value of \$5,000,000. *See* 28 U.S.C. § 1332(d)(6). Congress intended

24 ² *See Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal.
25 2008) ("In measuring the amount in controversy, a court must assume that the
26 allegations of the complaint are true and that a jury will return a verdict for the
27 plaintiff on all claims made in the complaint. The ultimate inquiry is what amount
28 is put 'in controversy' by the plaintiff's complaint, not what a defendant will
actually owe").

1 for federal jurisdiction to be appropriate under CAFA "if the value of the matter in
 2 litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the
 3 viewpoint of the defendant, and regardless of the type of relief sought (e.g.,
 4 damages, injunctive relief, or declaratory relief)." (Senate Judiciary Report, S.
 5 REP. 109-14, at 42). As set forth above, because the amount sought by Plaintiff is
 6 in excess of \$5,000,000 the amount in controversy under CAFA is also satisfied.

7 21. In summary, although American denies Plaintiff's factual allegations
 8 or that he or the employees that he purports to represent are entitled to the relief for
 9 which he has prayed, based on Plaintiff's allegations and prayer for relief, the
 10 amount sought by Plaintiff exceeds the \$5,000,000, meeting jurisdictional
 11 minimum for both diversity jurisdiction and CAFA jurisdiction.³

12 22. Venue. Venue is proper in this district, pursuant to 28 U.S.C. §
 13 1441(a), because the District Court for the Southern District of California is the
 14 judicial district and division embracing the place where the state court case is
 15 pending. Incidentally, as set forth in American's Notice of Related Cases,
 16 American asserts that this case is related and substantially identical to a case
 17 litigated and currently on appeal to the Ninth Circuit Court of Appeal from the
 18 Central District of California and reserves the right to request that this case be
 19 transferred to the Central District of California.

20 23. American will promptly serve Plaintiff with this Notice of Removal
 21 and will promptly file a copy of this Notice of Removal with the clerk of the
 22 Superior Court of the State of California in and for the County of San Diego as
 23 required under 28 U.S.C. § 1446(d).

24 24. The Complaint, Answer, and other process attached hereto as Exhibit

25
 26 ³ By estimating the amount Plaintiff may recovery if he prevails, American does
 27 not concede that Plaintiff will prevail on any claim or that, if he prevails, he is
 28 entitled to damages in any particular amount at all. American reserves the right to
 dispute Plaintiff's claims with respect to both liability and damages.

1 A and B constitute all process, pleadings, and orders received or sent by Defendant
2 in this case.

3 **NOW THEREFORE**, American respectfully requests that this action be
4 removed from the Superior Court of the State of California in and for the County of
5 San Diego to the United States District Court for the Southern District of
6 California, and that all proceedings hereinafter in this matter take place in the
7 United States District Court for the Southern District of California.

8
9 Dated: December 22, 2009

MORGAN, LEWIS & BOCKIUS LLP

10
11 By: 

12 Robert Jon Hendricks
13 Attorneys for Defendant
14 AMERICAN AIRLINES, INC.
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EXHIBIT A

FILED
CIVIL BUSINESS OFFICE 8
CENTRAL DIVISION

09 NOV 24 PM 1:47

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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Attorneys for Plaintiff Robert S. Mawhinney,
Individually, and as a Representative of
Other Members of the Public Similarly Situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DIVISION

ROBERT S. MAWHINNEY,
INDIVIDUALLY, AND AS A
REPRESENTATIVE OF OTHER
MEMBERS OF THE PUBLIC SIMILARLY
SITUATED,

Plaintiffs,

v.

AMERICAN AIRLINES, INC. AND
DOES 1-10, INCLUSIVE,

Defendants.

Case No. 37-2009-00102754-CU-OE-CTL

REPRESENTATIVE ACTION

COMPLAINT FOR VIOLATION OF
THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF
2004 (CAL. LAB. CODE § 2698, ET
SEQ.)

COMES NOW Plaintiff Robert S. Mawhinney, individually and as a representative of Defendants American Airlines, Inc.'s and Does 1-10's other California employees and asserts the following claims:

1. This is a representative action for recovery of penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code § 2698, *et seq.* (See *Arias v. Superior Court* (2009) 46 Cal.4th 969.) PAGA permits an "aggrieved employee" to bring a lawsuit on behalf of himself and other current and former employees, on a representative basis, to address an employer's violations of the California Labor Code. In this case, Defendants violated California Labor Code § 226 by failing to provide suitable itemized wage statements to Plaintiff and their other current and former California employees. Plaintiff seeks penalties on behalf of himself and Defendants' other current and former California employees.

2. Plaintiff is, and at all times mentioned in this Complaint was, a resident of San Diego County, California.

3. Defendant American Airlines, Inc. ("Defendant") is a corporation organized and existing under the laws of Delaware, and was and is at all times mentioned herein licensed and qualified to do business in the state of California and did and continues to transact business in the state of California. Defendant is an employer whose employees are engaged throughout San Diego County, the state of California, and/or the various states of the United States of America.

4. Whenever in this Complaint reference is made to any act, deed, or conduct of Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendant.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of the defendants sued herein as Does 1 through 10, inclusive and therefore sues said defendants (the "Doe Defendants") (Defendant and Doe Defendants are collectively referred to as "Defendants") by such fictitious names. Plaintiff will amend this Complaint to insert the true names and capacities of the Doe Defendants at such time as the

1 identities of the Doe Defendants have been ascertained.

2 6. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
3 the partners, agents, or principals and/or co-conspirators of Defendant, and of each other; that
4 Defendant and the Doe Defendants performed the acts and conduct herein alleged directly, aided
5 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
6 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
7 of the liability of the Defendants as alleged herein.

8 7. Plaintiff is further informed and believes, and thereon alleges, that at all times
9 herein material, each defendant was completely dominated and controlled by its co-defendants
10 and each was the alter ego of the other. Whenever and wherever reference is made in this
11 complaint to any conduct by Defendant or Defendants, such allegations and references shall also
12 be deemed to mean the conduct of each of the Defendants, acting individually, jointly and
13 severally. Whenever and wherever reference is made to individuals who are not named as
14 defendants in this complaint, but were employees and/or agents of Defendants, such individuals at
15 all relevant times acted on behalf of Defendants named in this complaint within the scope of their
16 respective employments.

17 **FACTUAL ALLEGATIONS**

18 8. At all times set forth herein, Defendants employed, and continue to employ,
19 Plaintiff and other employees throughout the state of California.

20 9. California Labor Code § 226(a) sets forth reporting requirements for employers
21 when they pay wages: "Every employer shall ... at the time of each payment of wages, furnish
22 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,
23 (2) total hours worked by the employee ... (5) net wages earned ..., and (9) all applicable hourly
24 rates in effect during the pay period and the corresponding number of hours worked at each
25 hourly rate by the employee."

26 10. Defendants failed, and continue to fail, to provide Plaintiff and many of their other
27 California employees with paystubs that contain the information required by California Labor
28 Code § 226(a). Specifically, the wage statements Defendants furnished, and continue to furnish,

1 to Plaintiff and many of their other California employees fail to set forth all applicable hourly
 2 rates in effect during the pay period and the corresponding number of hours worked at each
 3 hourly rate by the employee in violation of California Labor Code § 226(a)(9).

4 11. Based upon a pre-filing investigation conducted by Plaintiff's counsel, Plaintiff
 5 alleges upon information and belief that Defendants employ more than 2,000 employees in the
 6 State of California and provides a large majority of these employees with wage statements that
 7 violate the requirements of California Labor Code § 226(a). The exact number of California
 8 employees to whom Defendants have provided such wage statements, as well as the exact number
 9 of wage statements Defendants have provided during the applicable time period, can be easily
 10 ascertained by reviewing Defendants' employee and payroll records.

11 **FIRST CAUSE OF ACTION FOR VIOLATION OF THE CALIFORNIA LABOR CODE**

12 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

13 (California Labor Code § 2698, *et seq.*)

14 (Against All Defendants)

15 12. Plaintiff repeats and incorporates herein by reference each and every allegation in
 16 paragraphs 1 through 11 inclusive, as though fully set forth herein.

17 13. California Labor Code § 226(a) sets forth reporting requirements for employers
 18 when they pay wages: "Every employer shall ... at the time of each payment of wages, furnish
 19 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,
 20 (2) total hours worked by the employee ... (5) net wages earned ..., and (9) all applicable hourly
 21 rates in effect during the pay period and the corresponding number of hours worked at each
 22 hourly rate by the employee."

23 14. Defendants furnished and continue to furnish Plaintiff and many of their other
 24 California employees with wage statements that violate the requirements of California Labor
 25 Code § 226(a). Specifically, the wage statements Defendants furnished and continue to furnish
 26 Plaintiff and many of their other California employees fail to set forth all applicable hourly rates
 27 in effect during the pay period and the corresponding number of hours worked at each hourly rate
 28 by the employee in violation of California Labor Code § 226(a)(9). A violation of California

1 Labor Code § 226(a) gives rise to private right of action under PAGA.

2 15. PAGA permits an "aggrieved employee" to recover penalties on behalf of himself
3 or herself and other current or former employees as a result of the employer's violations of certain
4 sections of the California Labor Code. Because Plaintiff is employed by Defendants and has
5 received, and continues to receive, wage statements that do not comply with California Labor
6 Code § 226(a), Plaintiff is an aggrieved employee under PAGA.

7 16. Plaintiff has complied with the PAGA notice provision set forth in California
8 Labor Code § 2699.3(a)(1). In a letter dated October 8, 2009, the California Labor and
9 Workforce Development Agency provided Plaintiff with notice that it does not intend to
10 investigate this violation. Accordingly, Plaintiff is entitled to commence this action.

11 17. PAGA, specifically California Labor Code § 2699(f), establishes a civil penalty to
12 be levied against California employers for violations of California Labor Code provisions that do
13 not contain their own civil penalties. California Labor Code § 2699(f)(2) provides that "[i]f, at
14 the time of the alleged violation, an employer employs one or more employees, the civil penalty
15 is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
16 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
17 violation."

18 18. Because Defendants are employers that currently employ one or more employees,
19 the civil penalties set forth in California Labor Code § 2699(f)(2) apply.

20 19. Plaintiff requests penalties against Defendants as provided under California Labor
21 Code § 2699(f)(2), plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests entry of judgment, on behalf of himself and the other California employees, against each defendant, jointly and severally, as follows:

On The First Cause of Action

1. For penalties according to proof;
2. For reasonable attorneys' fees and costs of suit; and
3. For such other and further relief as the Court deems proper.

Dated: November 24, 2009

MESERVY LAW, P.C.
THE LAW OFFICE OF DAVID P. STRAUSS

By: 

LONDON D. MESERVY (SB# 216654)

Attorneys for Plaintiff Robert S. Mawhinney,
Individually, and as a Representative of
Other Members of the Public Similarly Situated

SUMMONS (CITACION JUDICIAL)

FILED
CIVIL BUSINESS OFFICE 8
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
09 NOV 24 PM 1:47
CLERK-SAN DIEGO COURT
SAN DIEGO COUNTY, CA

NOTICE TO DEFENDANT: AMERICAN AIRLINES, INC. AND DOES
(AVISO AL DEMANDADO): 1-10, INCLUSIVE

YOU ARE BEING SUED BY PLAINTIFF: ROBERT S. MAWHINNEY
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Diego Superior Court
330 W. Broadway

San Diego, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DAVID P. STRAUSS, SBN 96874

619-237-5300

THE LAW OFFICE OF DAVID P. STRAUSS

1111 Sixth Avenue, Suite 404

San Diego, CA 92101

DATE: NOV 24 2009
(Fecha)

Clerk, by
(Secretario)

T. Lusch

T. Lusch

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

(SEAL)



EXHIBIT B

1 ROBERT JON HENDRICKS, State Bar No. 179751
2 LARRY M. LAWRENCE, State Bar No. 232720
3 MORGAN, LEWIS & BOCKIUS LLP
4 300 South Grand Avenue
5 Twenty-Second Floor
6 Los Angeles, CA 90071-3132
7 Tel: 213.612.2500
8 Fax: 213.612.2501

9 Attorneys for Defendant
10 AMERICAN AIRLINES, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO

13 CENTRAL DIVISION

FILED
CLERK OF SUPERIOR COURT
2009 DEC 21 P 12:23
SAN DIEGO COUNTY, CA

FAXED

14 ROBERT S. MAWHINNEY,
15 INDIVIDUALLY AND AS A
16 REPRESENTATIVE OF OTHER
17 MEMBERS OF THE PUBLIC
18 SIMILARLY SITUATED,

19 Plaintiffs,

20 vs.

21 AMERICAN AIRLINES, INC. and DOES
22 1-10, Inclusive,

23 Defendants.

Case No. 37-2009-00102754-CU-OE-CTL

DEFENDANT AMERICAN AIRLINES,
INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT

Action Filed: November 24, 2009

24 **GENERAL DENIAL**

25 Defendant AMERICAN AIRLINES, INC. ("Defendant") hereby responds to the
26 unverified Complaint for Damages of Plaintiff ROBERT S. MAWHINNEY ("Plaintiff") by
27 denying generally each and every allegation contained therein, pursuant to California Code of
28 Civil Procedure § 431.30(d).

//

//

MORGAN, LEWIS &
BOCKIUS LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

DB2/21465454.1

AMERICAN AIRLINES' ANSWER TO COMPLAINT

AFFIRMATIVE DEFENSES

Defendant also asserts the following defenses without admitting any burden of proof at trial:

First Affirmative Defense
(Failure to State a Cause of Action)

1. The Complaint, and each claim contained therein, fails to state facts sufficient to constitute a claim upon which relief can be granted.

Second Affirmative Defense
(Failure to Mitigate)

2. Plaintiff's monetary claims, and the claims of the representative or class action members, are barred, in whole or in part, because they have not appropriately or adequately mitigated their alleged damages, if any.

Third Affirmative Defense
(Avoidable Consequences)

3. The claims of Plaintiff and certain members of the representative or class action are barred in whole or in part by the doctrine of avoidable consequences.

Fourth Affirmative Defense
(Estoppel)

4. Plaintiff's claims and the claims of each representative or class action member, or some of them, are barred in whole or in part by the doctrine of estoppel.

Fifth Affirmative Defense
(Waiver)

5. Plaintiff's claims and the claims of each representative or class action member, or some of them, are barred in whole or in part because such claims have been waived, discharged and/or abandoned.

Sixth Affirmative Defense
(Statute of Limitations)

6. Plaintiff's claims and the claims of each representative or class action member, or some of them, are barred in whole or part by the applicable statute(s) of limitations, including but not limited to California Code of Civil Procedure Section 340.

Seventh Affirmative Defense

(Laches)

7. Plaintiff's claims and the claims of the representative or class action members, or some of them, are barred in whole or in part by the doctrine of laches.

Eighth Affirmative Defense

(Failure to Exhaust Internal/Administrative Remedies/Prerequisites)

8. Plaintiff's claims and the claims of representative or class action members are barred in whole or in part because they failed to exhaust their internal and/or administrative remedies or prerequisites, including the requirements of the Labor Code Private Attorneys General Act.

Ninth Affirmative Defense

(Unclean Hands)

9. Plaintiff's claims and the claims of the putative or members of the purported representative or class action, or some of them, are barred in whole or in part by their unclean hands and/or inequitable or wrongful conduct.

Tenth Affirmative Defense

(Due Process)

10. Permitting this action to proceed as a representative or class action, would be an unconstitutional denial of Defendant's right to due process under the Fourteenth Amendment to the United States Constitution and the California Constitution.

Eleventh Affirmative Defense

(Release)

11. To the extent that Plaintiff or any representative or class action member entered into any individual settlement agreement with Defendant or is otherwise bound by a release of claims against Defendant, any such individual has released the claims alleged in the Complaint.

Twelfth Affirmative Defense

(Excessive Fine)

12. An award of penalties against Defendant under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due

process and other rights under the United States and California Constitutions.

Thirteenth Affirmative Defense
(Lack Of Control And Manageability)

13. The Complaint fails, to the extent it asserts a representative action, because a representative action would lack control and manageability.

Fourteenth Affirmative Defense
(Additional Affirmative Defenses)

14. Defendant presently has insufficient knowledge and/or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional defenses if discovery indicates that such additional affirmative defenses would be appropriate.

PRAYER

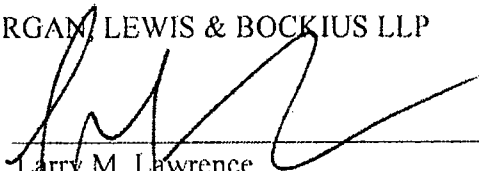
WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by this action;
2. That judgment be entered in favor of Defendant and against Plaintiff;
3. The Court deny Plaintiff's request to proceed as a representative or class action;
3. That Defendant be awarded its reasonable costs and attorneys' fees incurred, including but not limited to, under Section 218.5 of the Labor Code; and
5. That the Court award Defendant such other and further relief as the Court may deem proper.

Dated: December 21, 2009

MORGAN, LEWIS & BOCKIUS LLP

By


Larry M. Lawrence
Attorneys for Defendant
AMERICAN AIRLINES, INC.

PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 300 South Grand Avenue, Twenty-Second Floor, Los Angeles, CA 90071-3132. On December 21, 2009, I served the within documents:

DEFENDANT AMERICAN AIRLINES, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

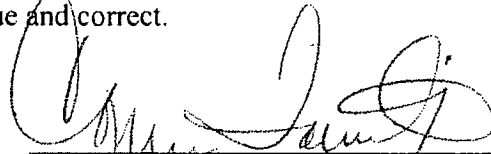
MESERVY LAW, P.C.
LONDON D. MESERVY
1111 Sixth Avenue, Suite 404
San Diego, CA 92101
T: 858.779.1276 / F: 866.231.8132

THE LAW OFFICE OF DAVID P. STRAUSS
DAVID P. STRAUSS
1111 Sixth Avenue, Suite 404
San Diego, Ca 92101
T: 619.237.5300 / F: 619.237.5311

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on December 21, 2009, at Los Angeles, California.

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct.



 Connie Torres-Gabig

PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 300 South Grand Avenue, Twenty-Second Floor, Los Angeles, CA 90071-3132. On December 22, 2009, I served the within documents:

DEFENDANT AMERICAN AIRLINES, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

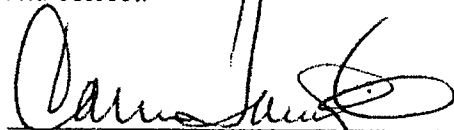
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DAVID P. STRAUSS
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T: 619.237.5300 / F: 619.237.5311

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Executed on December 22, 2009, at Los Angeles, California.

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct.



Connie Torres-Gabig

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ROBERT S. MAWHINNEY, Individually and as a Representative of other Members of the Public Similary Situated

DEFENDANTS

AMERICAN AIRLINES, INC. and DOES 1-10
Inclusive,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT WHT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

MESERVY LAW, P.C.
London D. Merservy SBN216654
1111 Sixth Avenue, Suite 404
San Diego, CA 92101
838.779.1276

ATTORNEYS (IF KNOWN) **09CV 2869 L RBB**
Robert Jon Hendricks, SBN 179751
Larry M. Lawrence, SBN 232720
MORGAN LEWIS & BOCKIUS LLP
300 S. Grand Ave., 22nd Fl., L.A., CA 90071
213.612.2500

BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | PT | DEF | PT | DEF |
|---------------------------------------|----------------------------|----------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

29 U.S.C. 1332, 1441, 1446 and 1453.

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions		

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint.
JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY (See instructions) JUDGE Manuel L. Real

Docket Number CV 07-03688R(SSX)

DATE 12/22/09 SIGNATURE OF ATTORNEY OF RECORD

OK #8589 \$350.00
MS 12/22/09

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS008589
Cashier ID: msweeney
Transaction Date: 12/22/2009
Payer Name: SAN DIEGO LEGAL SUPPORT SVCS

CIVIL FILING FEE

For: MAWHINNEY V AMERICAN AIRLINES
Case/Party: D-CAS-3-09-CV-002869-001
Amount: \$350.00

CHECK

Check/Money Order Num: 85154
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.